ESTATE OF MORRIS JACKSON

IBIA 78-18 Decided June 1, 1979

Appeal from the decision of the Administrative Law Judge determining that Andrew Jackson possessed sufficient Yakima blood quantum to inherit an interest in trust lands on the Yakima Reservation held in this estate.

Reversed.

APPEARANCES: Hovis, Cockrill & Roy by Tim Weaver, Esq., for appellant; Mac Donald, Hoague & Bayless, by Frederick L. Noland, Esq., for appellee.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

Decedent, Morris Jackson, Yakima Allottee 124-3673, died intestate on October 7, 1972, at the age of 63 years, while a resident of the State of Washington, unmarried and without issue, father, or mother.

Decedent possessed trust property situated in the States of Washington and Oregon, all of which is fully set forth in the inventories included in the record and not included herein.

By Order Determining Heirs dated February 19, 1974, Administrative Law Judge R. J. Montgomery, found appellee Andrew Jackson, a full brother of decedent, to be one of several heirs at law of the decedent and as such entitled to a one-half interest in decedent's one-third interest inherited from and through their father, Peter Jackson, deceased Yakima Allottee 124-2596; seven twenty-eighths interest in decedent's one-fifth interest in the allotment of their mother, Nettie Jackson, deceased Yakima Allottee 124-2597; seven twenty-eighths interest in decedent's own Yakima Allotment 124-3673; and seven twenty-eighths interest in the allotment of Sallie or Skoot-kun, deceased Warm Springs Allottee 145-36. Only the appellee's interests in the Yakima allotments referred to, supra, are relevant to this decision.

Pursuant to the Act of August 9, 1946, the Congress decreed that only enrolled members of the Yakima Tribes of one-fourth or more blood

of such tribes that make up the Yakima Nation shall take by inheritance or by will in that part of the restricted or trust estate of a deceased member of such tribes which came to the decedent through membership in such tribes or which consists of any interest in or the rents, issues, or profits from an allotment of land within the Yakima Reservation or within the area ceded by the treaty of June 9, 1855, except that a surviving spouse of less than one-fourth of the blood of the Yakima Tribes may receive by inheritance or devise the use for life of one-half of the restricted or trust lands of the decedent located within the Yakima Reservation or within the area ceded by the said treaty of June 9, 1855; Act of December 31, 1970 (P.L. 91-627; 84 Stat. 1874; 25 U.S.C. § 607, amending section 7 of the Act of August 9, 1946 (60 Stat. 968; 25 U.S.C. § 607) with respect to trust or restricted land within the Yakima Reservation or within the area ceded by the Treaty of June 9, 1855 (12 Stat. 951).

Judge Montgomery further found that Andrew Jackson did not possess the required one-quarter blood quantum of the tribes constituting the Yakima Nation, tribal authority having set his blood quantum as one-eighth Yakima, three-quarters Wasco, and one-eighth White.

Andrew Jackson, himself a Yakima allottee, requested the Yakima Tribe to waive its option to take since appellee's children possessed through their mother, the requisite blood quantum to inherit from the appellee. The Tribe decided to exercise its option to buy all option interests in decedent's estate.

Appellee then disputed the finding that he had insufficient Yakima blood quantum to inherit and a hearing was scheduled for the purpose of determining who Andrew Jackson's antecedents were and what blood quantum they possessed.

Appellee contended that irrespective of the question of blood line per se, he is by historical tribal affiliation within the class of the 14 tribes covered by the treaty of 1855 by virtue of being a "Cascade" and is therefore entitled to full consideration of the rights and privileges of Yakima enrollees of more than one-quarter Yakima blood, in effect saying that Indians historically referred to as "Cascades" were and are in fact Yakima Indians.

A hearing was held at Toppenish, Washington, on July 24, 1975, and February 1 and 2, 1977, by Administrative Law Judge Robert C. Snashall who acquired jurisdiction over this matter upon the untimely death of Judge Montgomery. Both parties presented evidence including numerous documents and testimony.

Judge Snashall issued his decision on May 16, 1978, wherein he found the bulk of the evidence presented substantiates that Andrew Jackson is of sufficient Yakima blood, whether called "Cascade" or Yakima, to be entitled to retain his property and lands inherited on

the Yakima Reservation. He further found and concluded the Yakima Indian Tribe is not entitled to acquire appellee's interest in the Yakima Reservation lands inherited by him from the decedent herein.

The Yakima Tribe filed an appeal on July 14, 1978, wherein it contends in substance that Judge Snashall committed the following errors:

1) In his interpretation of 25 U.S.C. § 607 (1976) and 43 CFR 4.300-4.317, as allowing a redetermination of right to enrollment, specification of blood quantum, mechanics of enrollment, and determination of what "Tribes" are involved in the Confederated Tribes and Bands of the Yakima Indian Nation.

2) In failing to grant Tribe's motion to dismiss on jurisdictional grounds.

3) In determining that "all highly doubtful situations," such as here, should be weighed in favor of the appellant.

4) In his finding that the opinion of the Department of the Interior as to bloodline of Joe Thomas was not controlling.

5) In his decision which fails to comply with the regulations and to decide the issue presented.

We find with respect to appellant's first contention, that Judge Snashall did not err in his interpretation of 25 U.S.C. § 607 and 43 CFR 4.300-4.317.

It has been consistently held that an Indian Tribe has the power to determine its membership for specific purposes. However, the power of an Indian Tribe has been restricted by section 5 of the General Allotment Act, which provides in part that the Secretary of the Interior shall have unreviewable discretion to determine the heirs of an Indian in ruling upon the inheritance of individual allotments. This would include the specification of blood quantum as it relates to restricted property under the General Allotment Act.

Section 4.300(4)(b)(2) clearly authorizes the Administrative Law Judge, in matters relating to entitlement of the Tribe to take restricted property, to make a determination as to enrollment or refusal of the Tribe to enroll a specific individual, and specification of blood quantum provided that such issues had not been previously finally determined for the Department after an appeal.

We now turn to the question of whether Andrew Jackson's blood quantum had been finally determined for the Department.

The record is voluminous and complex. However, after a review of the complete record we find the evidence to be substantial that a

final determination after appeal was not made as to Andrew Jackson's blood quantum.

The appellant further contends that the Administrative Law Judge committed error in failing to grant appellant's motion to dismiss on jurisdictional grounds. We cannot agree.

The appellant argues that the Supplemental Order of Distribution of April 23, 1974, was in practice and under the applicable regulations, the final order in the above entitled matter. The regulations then in effect as to rehearing, 43 CFR 4.241, provide that:

> Any person aggrieved by the decision of the Administrative Law Judge may, within 60 days after the date on which notice of the decision is mailed to the interested parties, file with the Superintendent a written petition for rehearing.

Appellant further argues that 60 days as to the Supplemental Order of Distribution of April 23, 1974, lapsed on June 22, 1974, a request for rehearing was not filed within the 60-day period, However, the rules on Computation of Time for Filing and Service, 43 CFR 4.22(e) provide:

> The last day of the period so computed is to be included, unless it is a Saturday, Sunday, Federal legal holiday, or other nonbusiness day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other nonbusiness day.

It appears that June 22, 1974, fell on a Saturday, the next business day was Monday, June 24, 1974. Consequently, we find that the June 24, 1974, letter was received within the requisite time period to stay the proceedings and the time period for rehearing. Moreover, since the matter was still pending on September 30, 1974, the date the regulations regarding Tribal Purchase of Interests Under Special Statutes became effective, all parties became thereto subject.

Assuming arguendo the Administrative Law Judge did in fact lose jurisdiction, this would not, we think, preclude the exercise of the inherent authority of the Secretary to consider the question of blood quantum. See 25 CFR 1.2.

We disagree with Administrative Law Judge Snashall's conclusion that "all highly doubtful situations should be weighed in favor of the applicant" and consequently here should be weighed in favor of the appellee.

The Secretary of the Interior as Trustee of the Tribe and the individual Indian is duty bound to protect their rights equally, preferring neither one nor the other. We therefore find that Judge

Snashall could not in this case weigh doubtful situations in favor of the appellee.

This brings us to the vital issue of who Andrew Jackson's antecedents were, what Tribal blood they possessed, and whether Andrew Jackson possesses sufficient Yakima blood quantum to inherit from the decedent.

The appellee filed an application for enrollment in the Yakima Tribe on August 5, 1948, and the Tribe found him to possess the following blood quantum--five-eighths Wasco, one-fourth Cascade, and one-eighth White.

The appellee subsequently made several attempts to have his blood quantum changed to at least one-fourth Yakima in order that he might be eligible to inherit under the Act of 1946. The appellee admittedly made several conflicting statements as to the blood quantum of certain of his antecedents.

Obviously these inconsistencies were innocent and not ill conceived with the intent to mislead or deceive as we shall see. The task of determining the true blood quantum of Andrew Jackson's antecedents was extremely difficult for all concerned, including the Bureau of Indian Affairs with all of its resources. This is confirmed by the complete record.

In order to acquire a better insight into the difficulties that confronted the parties concerned, we believe it apropos to relate briefly the historical background of the Yakima Nation and the events leading up to the Yakima Enrollment Act or the Act of August 9, 1946, and amendments thereto, cited, supra.

The large geographical area east of the Cascades (Cascade Mountains) and presently known as the Yakima Nation was divided into bands and tribes. A tribe was considered to be a group with an individual language, a chief, and a traditional government. A band was known as a branch of the tribe. These bands and tribes lived on both sides of the Columbia and on the northerly branches of the Yakima and Wenachee Rivers in the State of Washington and their principal occupations were fishing, farming, and hunting.

On June 9, 1855, the United States Government signed a treaty (ratified by Congress March 8, 1859) with 14 tribes and bands living within this location that were confederated into the Yakima Nation. They were the Klickitat, Klinquit, Kow-was-say-ee, Kah-milt-pah, Li-ay-was, Oche-chotes, Palouse, Pisquose, Skin-Pah, Se-ap-cat, Shyiks, Wenatchpam, Wish-ham, and the Yakima. The language spoken by the different tribes and bands was a composite of various languages of the Shahaptin linguistic stock. Pursuant to the treaty, the Tribes ceded to the United States Government 10,800,000 acres of ancestral lands in line with specific geographical points and retained 1,200,000 acres

for a new Yakima Reservation for "exclusive use and benefit" of people affected by treaty signing. See "Yakima History" by Robert Pace, Yakima National Review, pp. 13 and 14 (January 15, 1977), Exhibit 77.

Pursuant to the Act of February 8, 1887, or the General Allotment Act (24 Stat. 388) as it is frequently called, the President of the United States was authorized to allot tribal lands in designated quantities. In the case of allotments on the Yakima and other adjoining Reservations, in the early days prior to the passage of the Act of August 9, 1946, referred to, supra, Indians were allotted irrespective of their Tribal blood quantum.

The passage of the Yakima Enrollment Act, better known as the Act of August 9, 1946, consequently presented serious problems in enrollment due primarily to the fact that early records may not show degree of Indian blood or Tribal connection. Moreover, first hand corroboration or substantiation of Indian blood quantum is complicated by the fact that the antecedents are no longer living. The matter is further complicated by the contention on the part of certain applicants for enrollment that their ancestors were members of certain groups or bands that were interrelated with one of the 14 tribes that made up the Yakima Nation, thereby making them eligible to inherit restricted property on the Yakima Reservation pursuant to section 7 of the Act of August 9, 1946, referred to, supra.

For example, in a letter dated September 14, 1915, to the Commissioner of Indian Affairs, Superintendent Carr of the Yakima Agency wrote concerning a claim by a group of Indians known as the Cascade Band, "The Cascades are not one of the tribes specifically mentioned in the Yakima Treaty but nevertheless having received allotments here they have been recognized as Yakima Indians and would, no doubt, be entitled to the benefits of the provisions of the treaty . . ." Indians allotted on the Warm Springs Reservation were often referred to among the Indian people along the Columbia River as being "from the Oregon side,"as Wascos. Indians allotted on the Yakima Reservation were similarly spoken of as being "from the Washington side,"and considered to be Yakima, regardless of their actual blood lineage.

As previously stated, the appellee, allotted as Yakima 3672, applied for enrollment in the Yakima Tribe on August 5, 1948. On or about June 9, 1949, he was found to be five-eighths Wasco, one-fourth Cascade, and one-eighth White. In 1955 the Yakima Tribal Enrollment Committee found that error was previously committed and changed appellee's blood quantum to three-fourths Wasco, one-eighth Yakima and one-eight White. Appellee subsequently petitioned the Tribe for review of his Yakima blood quantum and was afforded the opportunity of appearing before the Tribal Enrollment Committee on December 29, 1959, after which appellee's blood quantum was found to be the same, namely three-fourths Wasco, one-eighth Yakima, and one-eighth White.

Appellee further petitioned the Enrollment Committee to change his blood quantum alleging new evidence. A hearing was held on October 3, 1968, and testimony received from Lena Barney, Dora Tulee, Inez Slockish Jackson, Ruth Jackson Estabrook and Joseph Thomas Estabrook. Appellee's Yakima blood quantum was again determined to be the same as before.

In his August 1948 application for enrollment the appellee asserted that his maternal grandfather was four-fourths Cascade. He further asserted that he (appellee) had no Yakima blood. At a hearing held on December 29, 1959, the appellee stated that he had no Cascade blood. As stated previously, we believe these inconsistencies were obviously caused by the complexities of tracing antecedents so far back in time.

Keeping in mind that prior to the enactment of the Yakima Enrollment Act of August 9, 1946, the question of blood quantum was of little importance. Individual Indians who lived adjacent to or within close proximity to a reservation were apparently allotted and enrolled regardless of blood quantum. Consequently, the records in the main did not contain blood quantum of antecedents.

The Bureau of Indian Affairs and the Tribe relied basically upon the probate records and any form of testimony, documents, or records that might be of some probative value. It appears therefore that many of the determinations might possibly border on speculation. We do not believe this to be the case here.

In the matter of appellee, Andrew Jackson, he had from August 5, 1948, to the time of hearing conducted by Judge Snashall to attempt to persuade the Tribe and the Bureau of Indian Affairs that he had sufficient Yakima blood quantum or at least one-fourth Yakima blood quantum in order for him to take by inheritance under the Yakima Enrollment Act of August 9, 1946.

The Portland Area Office, Branch of Tribal Operations in or about 1969 prepared four ancestral charts from probate records, and information supplied by Andrew Jackson and Joseph Estabrook, appellee's half brother. Two of these charts we find to be of no probative value since Andrew Jackson was in no way related by blood to the persons referred to therein, namely, to Omyawock, Yakima Allottee 2676, Teahnannie, Yallup, Umalute, or Chamesapum. Exhibits 1 and 2.

We find exhibits 3 and 4 to be of no probative value since they are not supported by the evidence of record.

We find that a preponderance of the evidence supports the following consanguinity or blood quantum for Andrew Jackson and his antecedents:

Jim Jackson
Paternal Grandfather
4/4 WASCO

Peter Jackson
Father
4/4 WASCO

Tsen-e-ches-pum
Paternal Grandmother
4/4 WASCO

Andrew Jackson
Appellee
1/8 YAKIMA
3/4 WASCO

Joe Thomas
a/k/a Cascade Joe
Maternal Grandfather
4/4 WASCO

Nettie Jackson
Mother
3/4 WASCO
1/4 YAKIMA

Susie Williams Thomas
Maternal Grandmother
1/2 YAKIMA
1/2 WASCO

We are of the opinion that the above findings are substantiated by the overall record including the Family Ancestral Chart listed in the record as Exhibit 58; letter dated July 3, 1968, from the Acting Director, Portland Area Office to Andrew Jackson, listed in the record as Exhibit 57; the Last Will and Testament and testimony of Joe Thomas, maternal grandfather of appellee, wherein Joe Thomas states that he was of the Wasco Tribe, listed as Exhibit 66; probate records In the Matter of the Estate of Jim Jackson, testimony of certain of the children of Jim Jackson, wherein they declare themselves to be Wasco Indians, listed as Exhibit 61; and a letter dated August 2, 1960, from the Superintendent, Warm Springs Agency to the Superintendent, Yakima Indian Agency, wherein it is indicated that Jim Jackson had an illegitimate son, Peter Jackson (appellee's father) and the mother is shown only as Tsen-e-ches-pum, a Wasco Indian from Columbia River, listed as Exhibit 68.

Although there is some evidence to the contrary we accept the findings of the Deputy Commissioner of Indian Affairs that Susie Williams Thomas, appellee's maternal grandmother was one-half Yakima and one-half Wasco, having derived her blood quantum from Hilowa, who was found to be one-half Wishram and one-half Klickitat and Saweheabah, who was found to be one-half Hood River and one-half Wasco. Testimony taken during the prosecution of Indian Claims Commission Docket No. 198 filed by the Warm Springs Tribe indicates that the Hood River Indians were actually related to the Wasco Indians, listed as Exhibit 75. We take administrative notice of the fact that the Hood River Indians were actually related to the Wasco Indians.

Because of our finding that Andrew Jackson was one-eighth Yakima and seven-eighths Wasco, we conclude that the question of whether the Cascades were a related or interrelated band of the Yakima Tribe or Nation is moot.

We appreciate the paradoxical situation that exists here and appears to have been created by the enactment of the Yakima Enrollment Act of 1946, referred to, supra, namely that appellee, a Yakima allottee in his own right not being able to inherit his interest in a Yakima allotment from his decedent brother. However, we believe the statute to be clear in this regard and that any remedy the appellee may have, if any, would have to be pursued in another forum.

Accordingly, for the foregoing reasons Judge Snashall's findings should be modified in part and his decision reversed.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, it is ordered that Judge Snashall's findings are modified in part as set forth above, and his Order of May 16, 1978, REVERSED and the Yakima Indian Tribe has the option to buy the interests of Appellee Andrew Jackson on the Yakima Reservation inherited from the decedent Morris Jackson, referred to in Judge Montgomery's Order of May 19, 1974, for the fair market value of said interests as of the date of this decision.

This decision is final for the Department.

Done at Arlington, Virginia.

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Mitchell J. Sabagh
Administrative Judge

I concur:

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Alexander H. Wilson
Chief Administrative Judge